

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:09cr86

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
JOHN HAMILTON GRANT, JR.)	
_____)	

THIS MATTER is before the court on the government’s Motion to Provide the United States With a Written Summary of Defense Mental Health Experts’ Expected Testimony (#26).¹ Inasmuch as the response deadline under L.Cr.R. 47.1(E) corresponds with the first day of the trial term at which this action is scheduled to be tried, the undersigned has taken up and will dispose of such motion in advance of trial at the direction of the district court.²

In its motion,³ the government seeks a summary of the expected testimony of the expert witnesses identified by the defendant in his notification of April 16, 2010, captioned, “Defense Identification of Expert Testimony.” The government also seeks

¹ The government does not reflect in such motion consultation with opposing counsel. See L.Cr.R. 47.1(B).

² In addition, the court will take this up at this time inasmuch as the applicable rule requires defendant to generate a report.

³ Review of the rule, infra, reveals that defendant is obligated to produce the report upon the request of the government. No court order is required by Rule 16.

the results and reports of any examination of defendant's mental condition, conducted by the defendant's experts, upon which the defendant intends to introduce expert evidence. In support of such request, the government cites Rule 16(b)(1)(C)(ii), Fed.R.Crim.P., which provides as follows:

C) Expert Witnesses.

The defendant must, at the government's request, give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial, if --

(ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications[.]

Fed.R.Crim.P. 16(b)(1)(C)(ii). As pointed out by the Court of Appeals for the District of Columbia Circuit,

Rule 16 governs discovery and disclosure in criminal proceedings, and states in relevant part that if “the defendant has given notice under [Federal Rule of Criminal Procedure] 12.2(b) of an intent to present expert testimony on the defendant's mental condition,” Fed.R.Crim.P. 16(b)(1)(C)(ii), then the defendant also “must, at the government's request, give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial.” Fed.R.Crim.P. 16(b)(1)(C). This summary “must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.” Id.

United States v. Day, 524 F.3d 1361, 1370-1371 (C.A.D.C. 2008).

Indeed, production of such reports in advance of trial appears to be necessary

so that the government can determine whether to move to exclude such evidence or testimony in advance of trial under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). See id. The motion will, therefore, be allowed.

ORDER

IT IS, THEREFORE, ORDERED that the government's Motion to Provide the United States With a Written Summary of Defense Mental Health Experts' Expected Testimony (#26) is **GRANTED** and defendant is directed to produce a written summary of the expected testimony of the expert witnesses identified by the defendant in his notification of April 16, 2010, captioned, "Defense Identification of Expert Testimony," and the results and reports of any examination of defendant's mental condition, conducted by the defendant's experts, upon which the defendant intends to introduce expert evidence. Defendant shall serve such on counsel for the government not later than the close of business on April 29, 2010.

Signed: April 22, 2010

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Dennis L. Howell
United States Magistrate Judge

